



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAKURU

CAUSE NO.127 OF 2015

BONFACE MACHOKA OTOTO.....CLAIMANT

v

VALLEY CONFECTIONARY LTD.....RESPONDENT

JUDGMENT

1. This judgment is being delivered in Nairobi because of my transfer from Nakuru to Nairobi.
2. The Claimant sued the Respondent on 29 April 2015 alleging unfair termination of employment/breach of contract.
3. The Respondent filed a Response on 10 July 2015 denying the contentions by the Claimant, and on 20 March 2017 the Court scheduled hearing for 9 November 2017. The scheduling was done in the presence of Ms. Kerubo for the Claimant and Mr. Opar holding brief for Mr. Chege for the Respondent.
4. However, when the Cause was called out for hearing, the Respondent was not represented and the Court allowed the hearing to proceed as it was represented when the hearing date was being fixed.
5. The Claimant in his sworn testimony stated that he was employed by the Respondent in 1998 when it was called *Valley Bakery Ltd* and that there was a name change in April 2011 to *Valley Confectionary Ltd*. He was issued with an appointment letter when the name was changed.
6. On the separation, the Claimant testified that there was no notice before the Respondent's Personnel Manager informed him that his services were no longer required because he had sued the Respondent seeking damages as a result of an accident which occurred in the workplace.
7. On leave, the Claimant informed the Court that he never went on leave for the period he served the Respondent.
8. The salary at the point of separation was Kshs 14,750/-.
9. The Claimant produced several exhibits including pay slip and statement from the National Social Security Fund.
10. The Court notes that the Claimant tactfully failed to formally produce in evidence a schedule of final dues amounting to Kshs 73,987/- he was paid on 30 April 2011.

11. The dues included leave pay. But is not clear whether pay in lieu of notice was included.

12. The Claimant's evidence remaining unchallenged and uncontroverted, the Court finds and holds that the termination of his employment was unfair.

13. Considering the length of employment, the Court is of the view that maximum compensation would be appropriate.

14. Before concluding the Court notes that although the Claimant testified he was dismissed in April 2012, the final dues schedule is dated 30 April 2011

Conclusion and Orders

15. The Court finds and holds that the termination of the Claimant's employment was unfair and awards him and orders the Respondent to pay him

(i) Compensation Kshs 177,000/-

16. Claimant to have costs on half scale.

17. This file to be transmitted back to Nakuru after delivery of this judgment.

Delivered, dated and signed in Nairobi on this 19th day of January 2018.

Radido Stephen

Judge

Appearance

For Claimant Mr. Mboga instructed by Mboga G.G. & Co. Advocates

For Respondent Munene Chege & Co. Advocates

Court Assistant Nixon